held that the defendant did practice medicine within the meaning of the statute, but a new trial was ordered because the trial court in instructing the jury failed to recognize a clause in the statute excepting the practice of the religious tenets of any church. The reasoning in this case was followed in *People* v. *McTier,* 184 Ill. App. 635. In the recent case of *Crane* v. *Johnson,* 37 Sup. Ct. 176, the Supreme Court of the United States upheld the validity of a California statute regulating the practice of medicine, which specifically excepted "treatment by prayer" and the "practice of religion." In that case the person objecting to the statute did not pretend to use prayer in his treatment.

CONTRACTS—MUTUALITY.—Plaintiff and defendant entered into an agreement in writing whereby defendant, a manufacturer of sugar, agreed to sell, and plaintiff as a wholesale dealer in groceries, agreed to buy, all of plaintiff's "August requirements" of sugar at a fixed price. Sugar advanced in price. Plaintiff demanded of defendant an amount of sugar alleged to be the ordinary and normal quantity used by plaintiff for his trade. Defendant declined to deliver. *Held,* the contract was invalid for want of mutuality. *Jenkins & Co.* v. *Anaheim Sugar Co.,* 237 Fed. 278.

That the plaintiff's obligation to buy none of its "August requirements" from any person other than the defendant, was detriment to the promisee, and sufficient consideration to support the contract, the court agreed. The presence of consideration should furnish the only element of mutuality required. The court further declared that an agreement to buy and sell the requirements of an established business in which the use of the thing "required" is but incidental to the carrying on of the business itself is valid and should be upheld, but that invalidity results when the amount of the commodity to be purchased is determined by the mere wish, desire, or caprice of the purchaser. This distinction rests on no sound legal principle. The demand for "certainty," and for the elimination of "caprice" has probably resulted from two considerations, viz: the desire to simplify the question of damages, and the good policy of minimizing a large element of speculation which exists in such contracts. But the difficulty of ascertaining the damages of a breach can in no way touch the validity of the agreement, and if the state is to furnish the business sagacity which the parties lack, it should be offered by the legislature, not the courts. In a recent, and better reasoned, case involving the same question it was held that if the intention of the contract be clear, the mere uncertainty of the amount involved does not invalidate it. *Ramey Lumber Co.* v. *Schroeder Lumber Co.,* 237 Fed. 39. This is sound. It cannot be explained on principle how an option which results from the very terms of the contract, and for which there is admittedly sufficient consideration, can defeat the validity of the agreement.

CORPORATIONS—HOLDING STOCK IN LOCAL CORPORATION BY FOREIGN CORPORATION IS "DOING BUSINESS" IN THE STATE.—A Maine corporation owned practically all the stock of an Illinois corporation organized to sell life insurance. Under its Maine charter the corporation could not sell life insur-

ance. Under the Illinois statutes it was unlawful for one corporation to hold the stock of another. *Held,* that the Maine corporation was "doing business" in Illinois so as to make it amenable to the Illinois statutes prohibiting such holding, and since the whole scheme was an attempt by the promoters to do indirectly what they could not do directly, it must be declared illegal. *Central Life Securities Co.* v. *Smith, et al.,* (C. C. A. 1916), 236 Fed. 170.

The weight of authority is clearly against this case. *Mannington* v. *Hocking Valley Ry.,* 183 Fed. 133; *Peterson* v. *C., R. I. & P. Ry. Co.,* 205 U. S. 364; *Conley* v. *Mathieson Alkali Wks.,* 190 U. S 406; *People* v. *American Bell Telephone Co.,* 117 N. Y. 241; *United States* v. *American Bell Telephone Co.,* 29 Fed. 17; *Gilchrist* v. *Helena, &c Ry.,* 47 Fed. 593; *Toledo Traction, Light & Power Co.* v. *Smith,* 205 Fed. 643. And the weight of reason seems also with the majority rule. Thus in *People* v. *Bell Co.,* supra, RUGER, J., says: "Doing business" in the state "must be determined from the actual character of the business carried on * * * and not from the existence of any unexercised powers reserved to it by its contracts; for the material question is whether it has, in fact, done business within the state, and, if so, what was the nature, character and extent, and not whether it possesses the natural or contractual right to carry on such business." And in *United States* v. *American &c. Co.,* supra, JACKSON, J., points out that it is not sufficient to give jurisdiction in personam over foreign corporations that they have property rights, however extensive, within the district, or that they have pecuniary interests, however valuable, in a business managed and conducted by others. So control or ownership of stock is merely a status, or at most, a power; it is a right, not a transaction; passive, not active. It is elementary that a corporation holding shares is a distinct entity from the corporation whose shares are held, and that the latter is not the agent of the former so as to confer personal liability, unless secondarily by statute. In the instant case no reasons are assigned for departing from the majority rule. Three cases are cited: *Col. Trust Co.* v. *M. B. Works,* 172 Fed. 313; *Dittman* v. *Dist. Co. of Am.,* 64 N. J. Eq. 537; and *Martin* v. *Ohio Stove Co.,* 78 Ill. App. 105. Of these the latter two are not in point but *Col. Trust Co.* v. *M. B. Works* not only fully sustains the instant case but points out the basis for the differentiation from the main line of authority. In that case a Delaware corporation was organized to hold the stock of a Pennsylvania brick manufacturing corporation, in order to evade the stricter corporation laws of Pennsylvania. The court simply proceeded to strip away the corporate cloak assumed to evade the law. See *Metcalf* v. *Arnold,* 110 Ala. 180; *United States* v. *United Shoe Machinery Co.,* 234 Fed. 127, 15 MICH. L. REV. 78. So in the instant case it appears that the incorporators were, as the court states, trying to do indirectly what they could not legally accomplish directly. In all the cases cited for the majority rule it will be found that the holding was wholly innocent in its purpose, and in all but *Conley* v. *Mathieson Alkali Works,* supra, it was merely incidental to the rights of the parties involved, so that there were neither motives of public policy nor fraud to justify interference by the courts. *Caesar* v. *Capell,* 83 Fed. 403; *Blodgett* v. *Lanyon Zinc Co.,*

120 Fed. 893. Thus it seems plain that the instant case is limited in its effect to removing from the application of the general rule those holding companies organized primarily to evade the law.

CORPORATIONS—ISSUE OF STOCK FOR PATENTS UNDER MICHIGAN STATUTES. —The corporation was capitalized at $200,000 of which $100,000 was subscribed and $20,200 paid in cash and property. Also a contract was entered into by which $70,000 in stock was issued to A, B, & C in return for their *promise* to assign the American patent, when it should be issued, to an air compressor for automobiles. Later, when it was found impossible to obtain an American patent, the directors of the corporation voted to accept the foreign patents already held by A, B, & C in lieu of the American patent. *Held,* that this contract was in fraud of the other stockholders and that the stock issued to A, B, & C should be delivered up to be canceled, and they barred from sharing in distribution of corporate assets on dissolution. *In re American Air Compressor Co.,* (Mich. 1916), 160 N. W. 388.

Clause 6 of §2 of the General Incorporation Laws of Michigan (How. ANN. STAT. §9533) provides that 10% of the authorized capital stock of a corporation must be paid in cash or property, and in the latter case there must be affidavits by at least three of the incorporators averring actual transfer to the corporation, and swearing to the actual value. Here it seems that $70,000 in stock was to be issued on the mere *possibility* of a patent, and it is difficult to conceive how a patent right in futuro could have been transferred to the corporation or how it could have satisfied the further requirement of the statute that it be transferable by the corporation and subject to levy and execution by the corporate creditors. The matter was not brought up in the case and was not mentioned in the opinion, as it was not necessary to decide the case. This is regrettable. In many corporations a large amount of stock is issued for patent rights. The Michigan statute is in terms most rigid. The evaluation of a patent right, which must be sworn to, is a difficult matter at best, and it is of the greatest importance to a large number of honest and well-intentioned citizens that the courts define just what is required of incorporators who wish to issue shares for patent rights which are necessarily more or less conjectural in value.

EVIDENCE—EXPERT TESTIMONY NOT ADMISSIBLE ON QUESTION OF SIGNATURE BY MARK.—A will was signed by a feeble man, 92 years of age, who made a mark as a substitute for his signature. Three witnesses testified that the testator had made the mark; two testifying that the testator had made the mark unassisted, while the third testified that he had aided the testator's feeble hand in making the mark. Plaintiffs contesting the will offered expert testimony to show that this was not the mark of the testator. *Held,* that the court properly excluded the testimony, as a mark is not "writing" within the meaning of New York Laws 1880, Ch. 36, and Laws 1888, Ch. 555, which permit the comparison of writing by experts. *In re Caffrey's Will,* (1916) 161 N. Y. Supp. 277.

The court decided this case upon the authority of *In re Hopkins,* 172 N. Y. 360, 65 N. E. 173, 65 L. R. A. 95, 92 Am. St. Rep. 746, where it was ex-